APPENDIX A.

Grounds for Distinguishing Cases Cited by Respondents.

It is the Federal and Illinois law that the doctrine of *res ipsa loquitur* does not apply in a common law* action by a servant against the master.

Patton v. *Texas & Pacific R. Co.*, 179 U. S. 658, 663.
Drake Standard Machine Works v. *Brossman*, 135 Ill. App. 209, 222.

For this reason, and the additional reasons listed below, the cases cited by respondents (pp. 12-13) are not in point.

O'Hara v. *Brown Hoisting Co.*, 171 Fed. 394 (3 C. C. A.):

A master and servant case; *res ipsa loquitur* not involved.

Herricks v. *C. & E. I. R. Co.*, 257 Ill. 264:

A master and servant case. *Res ipsa loquitur* not applicable.

So. Bell Telephone Co. v. *Glawson*, 13 Ga. App. 520, 79 S. E. 488:

A suit for damages for failure to get through a telephone call to a physician. Complaint alleged specific acts of negligence which were not supported by the proof and *res ipsa loquitur* was not involved.

Grand Rapids, etc. R. Co. v. *Huntley*, 38 Mich. 537:

A carrier and passenger case but from a jurisdiction in which the doctrine of *res ipsa loquitur* is not the law; directly contrary on similar facts to *Chicago City Ry.* v. *Barker* (pp. 81, 82).

* Since the enactment of the Federal Employers Liability Act (U. S. C. 45: 51-59) in 1908, abolishing the defenses of negligence of a fellow-servant (*Jamison* v. *Encarnacion*, 281 U. S. 635, 639-640), and in certain cases, of assumption of risk in master and servant cases, the Federal Courts have applied the doctrine of *res ipsa loquitur* in such cases.
Leatham etc. Co. v. *Osby*, 79 F. (2d) 280, 284 (7 C. C. A.).

Siegel v. *Detroit, etc. R. Co.*, 160 Mich. 270, 125 N. W. 6:

A master and servant case; also from a jurisdiction which does not accept the doctrine of *res ipsa loquitur.*

Mooney v. *Beattie*, 180 Mass. 451, 62 N. E. 725:

A master and servant case; *res ipsa loquitur* not involved.

Reynolds v. *Merchants Woolen Co.*, 168 Mass. 501, 47 N. E. 406:

Another master and servant case; the Court distinguished the *res ipsa loquitur* cases on this ground and refused to apply the doctrine.

Shea v. *Wellington*, 163 Mass. 364, 40 N. E. 173:

Another master and servant case; *res ipsa loquitur* not involved.

Martin v. *Studebaker*, 102 N. J. L. 612, 133 Atl. 384:

Plaintiff was injured by the collapse of an automobile. Defendant automobile manufacturer proved that the wheel was bought from a reputable wheel manufacturer and that it was subjected to three inspections in defendant's own factory. The court decided the case on the analogy of master and servant cases and no question of *res ipsa loquitur* was involved.

Losee v. *Buchanan*, 51 N. Y. 476:

A boiler explosion damaged plaintiff's property adjoining. The Court said (51 N. Y. at 493):

> "The fact that defendants bought the boiler of reputable manufacturers was one of the facts tending to justification which the jury were bound to consider. It was not of itself a conclusive justification and the judge did not charge that it was."

Ardesco Oil Co. v. *Gilson*, 63 Pa. St. 146:

Another master and servant case. *Res ipsa loquitur* not involved.